IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No 293 of 2003

For Approval and Signature:

HON'BLE MR.JUSTICE A.L.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

MAHENDRA KESHAVLAL KAPADIA

Versus

STATE OF GUJARAT

Appearance:

1. Criminal Revision Application No. 293 of 2003

MR RASHESH SANJANWALA for MR PARESH M DAVE for Petitioner No. 1

MR VM PANCHOLI, LD. ADDL.PUBLIC PROSECUTOR for Respondent No. 1

MR VAKIL for MR ASIM J PANDYA for Respondent No. 2

CORAM : HON'BLE MR.JUSTICE A.L.DAVE

Date of decision: 01/10/2003

ORAL JUDGEMENT

Heard learned Advocate Mr. Rashesh Sanjanwala for the applicant and Mr. V.M.Pancholi, learned APP for State and Mr. Vakil on behalf of Mr. Ashim Pandya for

respondent No.2 - Excise Department.

2. The controversy spills around the question whether the learned Chief Judicial Magistrate, Surat could have imposed a condition, while enlarging the revisioner on bail, to deposit 25% of the "excise duty evasion" within 3 months from the date of release of the applicant.

3. A similar question had arisen before this Court in Criminal Revision Application No. 455 of 2003, which was decided on 24th Sept. 2003 along with Criminal Misc. Application No. 7367 of 2003 filed by the Department, wherein this Court has taken a view after considering provisions contained in Section 441 and 445 of the Criminal Procedure Code and after taking into consideration the following judgements that such condition cannot be imposed:-

1. Keshav Narayan Vs. State of Bihar, reported in AIR 1985 SC 1666;

2. Sandeep Jain Vs. N.C.T of Delhi, reported in AIR 2000 SC 714;

3. Moti Ram Vs. State of M.P. reported in (1978) 4 SCC 47;

4. Balbir Singh Chib Vs. Sanjay Dave, reported in AIR 2000 SC 3563 (1);

5. N. Sasikala Vs. Enforcement Officer, Enforcement Directorate, Madras, reported in 1997 Criminal Law Journal 2120;

6. C. Prakash Agarwal Vs. State of A.P, reported in 2000 Criminal Law Journal 4310;

7. Alluvdin Vs. Inspector of Police, Vandhavasi Police Station, reported in 2001 Criminal Law Journal 2672;

8. M.R. Narayanan Vs. State, reported in 2003 Criminal Law Journal 1472.

4. The above view was taken on the basis that the question whether there was actual duty evasion or not is yet to be adjudicated upon; that bail proceedings cannot be used for recovery of such dues and imposition of such condition would be unsustainable and harsh.

5. Since the question posed before this Court is already covered by the above judgement, this Revision Applicatiodeserves to be allowed and the same is accordingly allowed. The condition No.2 imposed by learned Chief Judicial Magistrate, Surat in his order dated 27.3.2003 in F.No. IV/9-HPIU-IV/16/2002 is hereby set aside. Rule is made absolute. Interim relief is confirmed. Direct service permitted.

(A.L.Dave, J.)

*/Mohandas